IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 600

W. J. DILLNER TRANSFER COMPANY
Appellant,

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL,
Appellees.

Appeal from the Supreme Court of Pennsylvania.
From the Pittsburgh District.

APPELLANT'S REPLY TO MOTION TO DISMISS

A motion to dismiss the above entitled appeal (received by Counsel March 15th) filed by Paul F. Barnes, Esq., of Shertz, Barnes & Shertz, contains an assertion of fact which we believe to be so broad as to be misleading and we feel that the attention of the Court should be directed to such detailed facts as are important here, to correct the error.

The motion to dismiss contains the following (page 4):

> "There is nothing of record to show who prepared and submitted the decision in the case to the Pennsylvania Public Utility Commission."

We called Mr. Barnes by telephone and directed his attention to our view of the matter and on March 18th we received a letter, copy of which is annexed hereto, explaining his attitude.

One of the grounds for this appeal, is the procedure forced upon Appellant by the Public Utility Commission. Over a period of several years this practice of referring all Rule or Complaint cases to the Law Bureau for handling and "recommended" decision seems to have grown into a well established pattern. Upon oral argument of the case at bar the Commission claimed that the statute authorizes such procedure. Mr. Barnes contends that the record merely shows that the Law Bureau "submitted" the recommendations. (without notice to Counsel). We think that this showing is sufficient. However, we wish to point out that Appellant's Petition to Remand, paragraph #7, names the Assistant Counsel who prepared and submitted the orders in question without notice to opposing counsel. The Answer of the Appellee Commission admitted the allegation and sought to justify the practice under the statute.

The Pennsylvania Public Utility Commission is composed of five members, having a fixed tenure of office. The Law Bureau is composed of Counsel and assistants, appointed by the Attorney General and they hold office at his pleasure, not subject to the Commission's pleasure. (See Section 9—Pa. Act March 31, 1937, P. L. 160 No. 43, cited as the Public Utility Law.)

The Public Utility Commission is an independent arm of the Pennsylvania Legislature while the Counsel who constitute the Law Bureau are employees, without fixed tenure of office, of the Executive Department. When the attorneys in the Law Bureau undertake to represent the Commission in any case, wherein

penalties may be imposed, they should be firmly bound by all the Rules of due process. Under the practice and procedure, as applied to this Appellant, the decision herein was actually prepared and submitted to the Commission, without notice to Counsel, by an employee of the Attorney General of Pennsylvania. We contend that the name of the individual Counsel is of no importance. As stated however the record discloses the name of the Counsel.

The Motions to dismiss should be denied and jurisdiction noted.

Respectfully submitted,

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RE: W. J. Dillner Transfer Company

Dear Mr. Adamson:

I have considered your telephonic requests and wish to make the following answer. Apparently the problem that you have is my statement in brief which reads as follows:

> "There is nothing of record to show who prepared and submitted the decision in the case to The Pennsylvania Public Utility Commission."

I have studied your references and nowhere do I find anything that could possibly change the factual statement that I made.

First, we will consider the Appeal at No. 601. In making my statement at that Docket I was answering the question presented by appellant in which the problem presented involved whether or not the same person or persons who conducted and prosecuted the hearings on complaint thereon may also prepare and submit the decision in the case. I have searched the record in vain including the page references you submitted and nowhere in the record does it appear what person, if any, submitted any decision to the Pennsylvania Public Utility Commission. It is true that at the top of the order which you have printed there appears the statement submitted by the Law Bureau. This, however, does not show who in the Law Bureau submitted it or if at all, or if it was the same person that appeared at the hearings. In addition, it may very well be that the report and order was merely reviewed by the law Bureau or maybe technical or

stenographic changes were made. In any event, my statement is absolutely true. There is nothing in the record to show who prepared and submitted the case to the Pennsylvania Public Utility Commission.

Next, we will consider the Appeal at No. 600. Again, your objection appears to be the same statement and, again, I was merely answering the same question presented by the appellant. Again, the mere fact that the rule and the order shows a citation at the top "Submitted by the Law Bureau" does not in any way reveal who the person was or whether or not the submission was merely checking technical or stenographic problems.

You referred me to your petition for remand of the record attached to your brief before the Superior Court. It is true that you make rather graphic allegations therein but these allegations were never proven, were never part of the factual record and nobody is bound by them and, certainly, to state that your mere allegations support conclusions from which no facts were produced is just not realistic.

You also stated to me on the phone that the Commission had admitted these allegations. I have read carefully the Commission's answer and they have admitted no allegations of yours concerning who may have made the final decision in this matter. As a matter of fact, the answer clearly states that the decision is that of the Commission and only the Commission.

I think that if you would carefully review my motion you must conclude, if you are fair, that I have stated the facts as they actually appear. I would be willing to write a letter to the Clerk of the Supreme Court in line with the thoughts I have expressed herein. If you feel that you should write the letter

then, of course, I will have no objection to your using the procedure of a letter rather than a printed reply.

Very truly yours,

SHERTZ BARNES & SHERTZ
(Signed) Paul F. Barnes

PFB:fg
cc: James W. Hagar, Esq.